

Law and Our Rights

Bangladeshi Migrant Workers in Malaysia: Abuse and Reform

The government must prove that it is a government of the people, not a mere marketer of them, writes N. Rahim

24,000 taka and includes one-way plane fare, visa, health certification, and government fees. However, most migrants pay over 60,000-70,000 taka when agent profits and bribes are added. A standard contract between employer and migrant ostensibly provides for adequate food and accommodation as well as regulates working hours, overtime, and medical care. It is not enforceable.

Migrants travel en masse and may not know their destination, as their agents hold all their documents. Upon arriving in Malaysia, sometimes the agent will return the migrant's passport to facilitate entry. The worker will be carted off with others by a Malaysian employment agent. According to Malaysian immigration officials, seventy percent of employment agencies involved in the recruitment of foreign workers operate without valid licences. This often means that the worker will find that his or her putative employer is nonexistent or has not requested labourers.

The migrant is thus forced to look for employment elsewhere, which is illegal under Malaysian law. The legal migrant, then, technically becomes an undocumented worker. The fortunate worker who is placed with a legitimate employer may soon find out that the terms of employment promised are illusory. Again, the employer usually illegally holds the worker's passport so the worker cannot leave the place of employment. If the worker is mistreated, he or she has no choice but remain. Bangladeshis who report abuses to Malaysian authorities may face detention and deportation. Those who attempt to lodge a complaint with the Bangladesh High Commission are offered little assistance. At best, their complaint is noted and filed away.

Some Bangladeshi migrant workers do not go through official channels or are led to believe they are legally migrating by unscrupulous traffickers who charge exorbitant prices and provide minimal



What makes them leave homes...the country? Poverty

imal protection. The usual clandestine route to Malaysia is via air to Bangkok, Thailand, after which migrants travel en masse via bus and foot to the China Sea, and finally by trawler to Malaysia. The journey takes two weeks or more. During this time, migrants are crowded into overcrowded and decaying jungle shacks and fed bread and small amounts of water. Throughout their journey, they must pay bribes to Thai immigration officials and police to avoid arrest and detention. When they finally reach Malaysia, they may be apprehended and detained in camps, or like many legal migrants, find that the jobs they were promised do not exist.

On the national level, the two countries have begun to modify migrant labour policies under pressure from non-governmental sources. In August last year, the two nations signed a Memorandum of Understanding for better working conditions for mi-

grant workers. Both promised to investigate the conditions at Malaysian detention camps and Bangladesh plans to impose stiffer penalties on traffickers and unscrupulous agents. Another law that may have an impact on traffickers is the Ordinance on the Oppression of Women and Children (1995). The Ordinance imposes rigorous penalties for kidnapping for unlawful or immoral purpose and trafficking in women. Given the minimal political power of migrant labourers, rigorous enforcement of these measures is unlikely.

Malaysia, in the wake of allegations of human rights abuses in its detention camps, placed a temporary moratorium on the entry of Bangladeshi workers. Malaysia ended the moratorium, but now allows only government to government labour recruitment. This policy may be fruitless, as it is likely that both governments will eventually contract out to private agents. It may also in-

crease undocumented migration.

Additional measures must be taken by Malaysia and Bangladesh. As suggested by Malaysian human rights groups, both countries should enforce laws which make it illegal for anyone to hold another's passport. This would restore the fundamental right of the worker to his or her identity in addition to allowing detained workers to prove their legal status to immigration officials.

The Malaysian government should also establish monitoring mechanisms and a complaints bureau for workers to report conditions at detention centres and to lodge complaints free from immigration consequences. For its part, Bangladesh should, at minimum, provide support services for Bangladeshi workers and follow-up on reports of abuse.

Agency transparency is also crucial. Governments of both countries should ensure that their agencies are open

and accessible for two primary reasons. First, agency transparency will deter corruption. Second, it will serve as a check on government actions and provide the government with independent review of its policies. Governments should utilize, not harass, NGOs both here and abroad to supplement their own investigations and work with NGOs to ensure that neither the system nor its users are abused. Past cooperation in a limited number of cases has been successful.

Such openness may appear to jeopardize good relations between governments. However, this analysis is myopic and short-sighted. In the long run, prompt government action to allegations of abuse will enhance the reputations of both governments in a world where human rights and trade are increasingly linked. Such actions would especially be welcomed in Bangladesh as the government would prove it is a government of the people, not a mere marketer of them.

Apart from national reforms, immigration and migration issues and policies must be discussed at international and regional levels, particularly in conjunction with regional free trade initiatives. APEC countries recently announced their goal of fully free trade by 2020. Although visas were mentioned as an area of market opening, immigration and migrant labour issues are not being adequately emphasized. Free movement of labour must be squarely addressed to realize truly free trade. Confronting such issues at both regional and international levels will provide guidance to national governments of both host and sending countries.

The International Labour Organization's Declaration of Philadelphia states that "labour is not a commodity." Yet mere commodities are precisely what Bangladeshi migrants have become to manpower and travel agencies, traffickers, Malaysian employers and both the Malaysian and Bangladeshi governments. Without significant and concrete national reform and regional and international review of labour migration policies, migrant labourers will remain commodities in a world in legal and ethical limbo.

N. Rahim — Researcher, Abi-O-Salish Kendra

Foreign Investment in Bangladesh and Related Laws

by Sadia Sultana

BAKLADESH is a developing country aspiring to boost its economy through encouraging Private Sector Investments and welcoming Direct Foreign Investment. Foreign investments can be made independently or through joint ventures. For foreign investments Bangladesh has the following advantages:

-It has the cheapest and easily trainable labour force

-Bangladesh is one of the three Asian countries who offers unconditional 100 per cent foreign ownership in industrial investments

-Inflation rate is the lowest (1.3 per cent) amongst Asian countries

-There is no restriction on issuing work permit to a foreign national.

-Bangladesh is most liberal in granting permanent residence and citizenship to foreigners depending upon quite small size of non-repatriable investment in industrial projects.

-Tax Holiday is allowed for new investments in Bangladesh varying from 5 years to 12 years depending on the location of the industry.

-Bangladesh enjoys the most Favoured Nation treatment from a number of countries including the USA.

-Being one of the least developed countries Bangladesh enjoys Generalized System of Preference (GSP) for favourable export to the USA.

-Bangladesh has Avoidance of Double Taxation Agreements with a number of countries.

-Legal protection to all foreign investments in Bangladesh against nationalization.

-Repatriation of foreign capital investments along with profits/dividends.

-Special facilities for industries established in two Export Processing Zones — one in Chittagong, the port city, another in Dhaka, the capital.

The laws relating to Foreign Investment in Bangladesh are briefly outlined as follows:

Foreign Private Investment (Promotion) Act, 1980 is the most important one for foreign investors. It provides for protection and equitable treatment to foreign investment in Bangladesh. It guarantees repatriation of capital and returns from it and indemnifies against losses of foreign investments owing to civil commotion, insurrection and riot. It also restricts nationalisation.

By another Act of Parliament, Investment Board, Act, 1989 a Board has been established with its Head Office at Dhaka which provides one stop service to entrepreneurs in respect of allotment of

land, power connection, gas, water supply and sewerage connections and telecommunication facilities etc.

The Industrial Policy of 1991 zealously pursued by the government plays a vital role in encouraging foreign investments.

The Arbitration Act, 1940 enacted during the days of British Rule is followed in Bangladesh for governing arbitration of disputes. The law is simple and less time consuming for resolving disputes.

The Arbitration (Protocol and Convention) Act, 1937, another statute from the time of the British rule provides for enforcing Foreign Awards in Bangladesh as if such award was made in Bangladesh. Bangladesh is also a signatory to the Convention on Settlement of Investment Disputes Between States and National of Other States. International Bank for Reconstruction and Development in Washington is the seat of International Centre for Settlement of Investment Disputes.

Trade Marks Act, 1940 provides for registration and protection of Trade Marks in Bangladesh. The procedures are simple and in line with the English Law on the subject.

The Patent and Designs Act, 1911 is more or less similar to English law on the subject and protects the Patents and Designs registered against all infringers.

The procedure for registration is simple.

Tax laws allow Tax Holiday for newly set up industries for periods ranging from 5 years to 12 years depending on the locations where an industry is set up. The rate of corporate taxation is quite low-35 per cent for publicly traded companies and 40 per cent for non-publicly traded companies. Publicly traded companies mean where public are substantially interested and the company is listed on the stock exchange as a Public Limited Company.

A foreign investor can establish a manufacturing company 100 per cent owned by foreigners or can also in joint-venture with local investors. A foreign company without being incorporated in Bangladesh can set up its place of business in Bangladesh. Procedures for registration of foreign companies in Bangladesh are rather simple.

Potential sectors for investment by foreigners are Electronics, Chemicals, Leather, Minerals, Natural Gas and Oil Exploration, Textiles, Energy, Power generation, Telecommunications etc.

Sadia Sultana — Advocate

One-party Election Leads to Autocracy

by Abdullah Al-Faruque

ARE we going towards a one-party system? Failure to resolve the current political crisis leads every one to apprehend such a fear. Indeed, the forthcoming parliamentary election is moving towards this direction. There is an appreciable growing concern among conscious citizens that such one-party system will seriously cloud the prospect of democracy. The concern can not be said to be wholly unjustified. Because the essence of democracy denotes multi-party system, not monopoly of one party in democratic polity.

The current political crisis which the country is facing, arises on the question of free and fair election. The question bears immense significance for the democratic governance in any country. The concept of democracy is based on that government should be constituted with the consent of the people. As a matter of fact, democratic

polity presupposes that all men are created equal and endowed with certain inalienable rights and it is to secure those rights that governments are instituted among men deriving their just powers from the consent of the governed. Democracy denotes the sovereignty of people and power of the state should be derived from the will of the people. Election is essential for the formation of the democratic government. Thus, election is the means to achieve democracy which is in itself an end. It is the mechanism through which people can effectively express their will to form a government. Article 7 of our Constitution adopts the essence of the philosophy of democracy as it declares "all powers in the Republic belong to the people." In complementing this philosophy, Article 11 proclaims that the Republic shall be a democracy. To achieve this democracy Article 11 contains the idea of election, when it says



Nobody to oppose: Where have all the representatives gone?

"effective participation by the people through their elected representatives in administration at all levels shall be ensured."

As a matter of fact, our Constitution gives fundamental importance on the election to facilitate popular participation in decision-making process of the state. However, democracy is not a mere form of government but is a form of society, a way of life. Similarly, election is not merely a way of orderly succession of power, but it is also one essential kind of

experience in which people receive political training and tolerance and values required for nourishing democracy in a meaningful perspective.

Again, democratic government implies multi-party system. For a democracy to be real the government's policies must be related to the wishes of the electorate. This is secured by a highly developed party system, with a general election taking the form of a choice between different party programmes. Political parties are recognised as a natural and inevitable piece of machinery of democracy. Democracy needs them for two reasons: first, political parties are the means by which the people get an opportunity to choose their rulers. People can reflect their ideology in governance through the political party. Secondly, political parties explain to the people and educate them about the merits and dangers of alternative policies. Thus, political parties establish a bridge between society and state. Harold Lasky correctly remarks, "The life of the democratic state is built upon the party system." Indeed, political parties adjust their positions to suit the expression of people's desire. Political parties are in-built component of the democratic order. Therefore if the election is held without the participation of major political parties, it will virtually negate the spirit of democratic order. Such one-party election will be a mockery and meaningless.

Although in a democratic system all the parties entail the responsibility for holding of free and fair election. It is the ruling party which entails much more responsibility in this regard. It is the moral responsibility of the ruling party to facilitate participation of all parties in election.

Politics is not only instrument for sustaining power, but it is means for maximising the welfare of the people. Narrow political interest must be sacrificed to the broad national interest. Let the spirit of democracy be kindled to hold free and fair election ensuring participation of all, as the absolute and unbridled power is contrary to rule of law.

History teaches us that one-party system tends to be

autocratic and sow the seeds of permanent political instability. Indeed, parliamentary democracy means multi-party democracy. The essential feature of parliamentary democracy is its accountability to the people. Strong opposition and healthy combat can ensure this accountability by putting effective check on the governmental actions. Accountability is the essence upon which whole edifice of the parliamentary democratic system should be built up. So if accountability is lost, the whole objective of the parliamentary democracy is bound to fail. So, if one-party system is established, it may be autocratic or dictatorial or personal rule, all the same. It can not give political stability, perpetual instability shall also hinder the development efforts and progress of the country.

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Lawscape

Revision of Food Laws is on Anvil in India

Indian government is taking steps to ensure safe, hygienic food and boost India's exports. The existing Prevention of Food Adulteration (PFA) Act 1954 has been largely unable to control the quality of food.

The government had constituted a task force last year to suggest amendments in the existing laws. The group, comprising eminent lawyers, gave its report to the Union minister for health and family welfare last week.

- Proposals made by this group are:
- inclusion of drinking water in the food Act;
 - putting emphasis on "good manufacturing practices" instead of "detection of adulteration and prosecution" as is being done now;
 - bringing out manuals by the government to prescribe procedures for the sampling of different types of products;
 - imposition of a tax equal to 0.5 per cent on the turnover of food processing industries to generate resources for modernisation of laboratories;
 - training of those involved in inspection, sampling and analysis of food;
 - appointment of an ombudsman "so that a competent and independent authority may also be available to look into the grievances of all concerned in this regard;
 - giving licence to all vendors; and
 - creating public awareness on hygienic and safe food.

(Report: Law Review Media Cell)

Maldevelopment and Human Rights at the Texas-Mexico Border

For over thirty years, American and other foreign corporations have taken advantage to low wages and unregulated environmental and labour regulations in Mexico to set up more than 2,200 assembly plants, known as maquiladoras, along the US-Mexico border. Largely unregulated, maquila operations have had a devastating impact on the local population and environment through the release of toxic contaminants and the creation of sprawling and overcrowded settlements.

Hundreds of thousands of people on both sides of the border live in unincorporated urban slums (colonias) without clean water, sanitation, and electricity. According to the American Medical Association the residents are living in "a virtual cesspool", afflicted by high rates of infectious diseases, cancer, neurological disorders and birth defects. With the ratification of the North American Free Trade Agreement and macro-economic policies aimed at attracting foreign investment and drastically reduce social services, the problems of the border are expected to intensify.

Our readers, legal bodies and lawyers are invited to send us factual tidbits, information, and dates for any upcoming seminars, for publication in "Lawscape".



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